(11)

No. 06-8120

IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JAN 12 2007
OFFICE OF THE CLERK

BRUCE EDWARD BRENDLIN,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA SUPREME COURT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDMUND G. BROWN JR.
Attorney General of the State of California

MARY JO GRAVES
Chief Assistant Attorney General

MICHAEL P. FARRELL
Senior Assistant Attorney General

DONALD E. DENICOLA
Deputy State Solicitor

MICHAEL A. CANZONERI
Supervising Deputy Attorney General

PAUL A. BERNARDINO
(California State Bar No. 164654)
Deputy Attorney General
Counsel of Record

1300 I Street
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-5281
Fax: (916, 324-2960

Counsel for Respondent

QUESTION PRESENTED

1. Whether a passenger in a vehicle subjected to a traffic stop is thereby "detained" for purposes of the Fourth Amendment, thus allowing the passenger to contest the legality of the traffic stop.

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	7
THE PETITION SHOULD BE DENIED BECAUSE, EVEN IF THIS COURT WERE TO CONCLUDE THAT PETITIONER WAS SEIZED WITHIN THE MEANING OF THE FOURTH AMENDMENT BY VIRTUE OF THE TRAFFIC STOP, THE EVIDENCE OBTAINED WAS NOT SUBJECT TO SUPPRESSION; THUS RESOLUTION OF THE QUESTION PRESENTED IN THE PETITION WOULD NOT LEAD TO A CHANGE IN THE JUDGMENT	
Introduction	7
Argument	8
CONCLUSION	15

TABLE OF AUTHORITIES

Cases	Page
Brown v. Illinois 422 U.S. 590 (1975)	11, 12
New York v. Belton 453 U.S. 454 (1980	11
New York v. Harris 495 U.S. 14(1990)	9, 10
People v. Brendlin 8 Cal.Rptr.3d 882 (2004)	4
People v. Brendlin 38 Cal.4th 1107 (2006)	5
United States v. Ceccolini 435 U.S. 268(1978)	8
United States v. Crews 445 U.S. 463 (1980)	9, 10
United States v. Drayton 536 U.S. 194 (2002)	9
United States v. Green 111 F.3d 515 (7th Cir. 1997)	12
United States v. Johnson 33 F.3d 538 (7th Cir. 2004)	12
United States v. Leon 468 U.S. 897 (1984)	8
United States v. Mosley 454 F.3d 249 (3rd Cir. 2006)	14
United States v. Simpson 439 F.3d 490 (8th Cir. 2006)	12

Page

Wong Sun v. United States
371 U.S. 471(1963) 8

Constitutional Provisions

United States Constitution
Fourth Amendment *passim*

Statutes

California Penal Code §1538.5 3

IN THE SUPREME COURT OF THE UNITED STATES

No. 06-8120

BRUCE EDWARD BRENDLIN

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

STATEMENT OF THE CASE

On November 27, 2001, Sutter County Sheriff's Deputy Robert Brokenbrough observed a vehicle with expired registration tags traveling on South Barrett Road. Petn. Appendix D, RT 12.[1] Deputy Brokenbrough confirmed the expiration of the tags by police radio and also learned that an application for new registration was pending. RT 24-25. While following the car Deputy Brokenbrough saw that there was a temporary operating permit in the rear window with the number "11," representing the month of November. The temporary permit was good until the last day of November 2001.

1. Petitioner included with his petition a copy of the reporter's transcript (RT) of the motion to suppress (petn. Appendix D) the pertinent facts noted herein are taken from that document and are referenced by their RT cite (i.e RT_.)

Deputy Brokenbrough had prior experience with people removing temporary operating permits and switching them around on vehicles in order to avoid fines for expired registration. He felt that he needed to assure himself that the permit actually belonged to the vehicle on which it was displayed. RT 28-29, 45-46. Deputy Brokenbrough "made a traffic stop on the vehicle." RT 14. At the officer's request, the driver identified herself as Karen Simeroth and Petitioner, the front passenger, misidentified himself as "Bruce Brown." RT 15-16.

Deputy Brokenbrough, however, recognized Petitioner and knew him to be one of the Brendlin brothers. He was also aware that one of the Brendlin brothers was a parolee at large. RT 15-16. Deputy Brokenbrough ran a police radio check on Petitioner. The dispatcher informed Deputy Brokenbrough that Petitioner was a parolee at large. RT 16. While obtaining this information, the deputy observed Petitioner open the passenger door but remain in his seat. RT 17. Shortly thereafter, within a couple of minutes from when the deputy asked Simeroth for her license, Deputy Brokenbrough confirmed that there was a warrant for Petitioner's arrest. RT 17.

Deputy Brokenbrough ordered Petitioner out of the vehicle at gun point and arrested him. A search of petitioner's person revealed a syringe cap in his shirt

pocket. RT 18-19. A subsequent pat-down search of Simeroth yielded two syringes and a plastic leafy substance. RT 22. She was then arrested. Following Simeroth's arrest, the vehicle was searched. Inside the car Deputy Brokenbrough found a container, on the front seat between the driver and passenger, containing "tubing, a scale, and other items," later determined to be related to the manufacture of methamphetamine. RT 23.

Following his arrest, Petitioner was charged with multiple counts relating to the manufacture and possession of methamphetamine.

On January 25, 2002, Petitioner filed a motion to suppress evidence pursuant to California Penal Code section 1538.5 on the grounds that his Fourth Amendment rights had been violated.

Following a hearing the trial court denied Petitioner's motion. The court concluded that the traffic stop was not unreasonable; that Petitioner had not been detained until the deputy ordered him out of the car at gunpoint and arrested him on the warrant because petitioner was free to leave once the car was stopped; and that Petitioner lacked "standing" to bring a motion to suppress the items found in the car. RT 70.

Following the denial of his motion to suppress, Petitioner withdrew his previously entered plea and entered a

negotiated plea of guilty to one count of the information. CT 88. On February 11, 2002, Petitioner was sentenced to a negotiated term of four years in state prison. CT 90.

On appeal, Petitioner asserted that the trial court had erred in denying his motion to suppress. The State Court of Appeal agreed. The Court of Appeal held that a passenger is detained within the meaning of the Fourth Amendment when the car in which he is riding is subjected to a routine traffic stop, at least during the actual stopping of the vehicle. *People v. Brendlin*, 8 Cal.Rptr.3d 882, 115 Cal.App.4th 206, 210-211, (2004). The Court of Appeal also concluded the passenger in such a situation may challenge the lawfulness of the vehicle stop. *Id.* at p. 887. The appellate court further ruled that the traffic stop in petitioner's case was unlawful because the facts, and inferences arising from them, were insufficient to support a reasonable suspicion of criminal activity. *Id.* at pp. 887-888. Finally, the Court of Appeal ruled that since all of the evidence seized from Petitioner would not have been discovered but for the unlawful stop it should have been suppressed. Accordingly, the court reversed the judgment against Petitioner. *Id.* at p. 888.

The State appealed and The California Supreme Court granted review. In the California Supreme Court, the State conceded that the traffic stop was not supported by reasonable

suspicion of criminal activity, but argued that Petitioner as a passenger was not seized within the meaning of the Fourth Amendment merely by virtue of the stopping of the car in a routine traffic stop. In the State's view, petitioner was not seized until Deputy Brokenbrough ordered him out of the car at gunpoint and arrested him pursuant to the outstanding warrant. Further the State argued that, even if Petitioner had been unlawfully seized prior to the discovery of the warrant, the evidence against him was properly admissible because it was the product of an intervening lawful search incident to his arrest under the warrant.

The California Supreme Court held that a passenger in a car subjected to a traffic stop whose progress is momentarily stopped as a practical matter is not seized as a constitutional matter in the absence of additional circumstances that would indicate to a reasonable person that he or she was the subject of the peace officer's investigation or show of authority. *People v. Brendlin*, 38 Cal.4th 1107, 1123, 136 P.3d 845, 45 Cal.Rptr.3d 50 (2006). The court thus concluded that petitioner was not "seized" when the driver submitted to the police officer and brought the car to a stop. The court did not reach the State's argument that the evidence obtained was not sufficiently related to the allegedly unlawful seizure. The court reversed the judgment of the

Court of Appeal. Petitioner's petition for rehearing was denied on August 30, 2006.

BEST AVAILABLE COPY

REASONS FOR DENYING THE PETITION

THE PETITION SHOULD BE DENIED BECAUSE, EVEN IF THIS COURT WERE TO CONCLUDE THAT PETITIONER WAS SEIZED WITHIN THE MEANING OF THE FOURTH AMENDMENT BY VIRTUE OF THE TRAFFIC STOP, THE EVIDENCE OBTAINED WAS NOT SUBJECT TO SUPPRESSION; THUS RESOLUTION OF THE QUESTION PRESENTED IN THE PETITION WOULD NOT LEAD TO A CHANGE IN THE JUDGMENT

Introduction

This Court should deny the petition because not withstanding the question his petition presents about the privacy rights of a passenger in a stopped car, the challenged evidence in this case was properly admissible in any event because it was not sufficiently connected to the allegedly illegal traffic stop. Regardless of whether Petitioner was detained during the actual stop of the vehicle, he was free to go once the stop had been effectuated. His subsequent arrest and the search of his person and the vehicle were the result of the intervening discovery, during a consensual encounter, of an outstanding arrest warrant supported by probable cause. Thus, the discovery of the challenged evidence was not sufficiently connected to the traffic stop and no evidence was obtained as a result of the allegedly unlawful initial detention of Petitioner.

Argument

In his petition, Petitioner argues that there exists a significant split of authority on the question of whether a passenger in a vehicle subjected to a routine traffic stop is thereby seized within the meaning of the Fourth Amendment. (Petn. at 18-27.) Regardless of Petitioner's argument and as explained in more detail below, this particular case is not an appropriate vehicle to resolve the question presented in the petition. The evidence obtained against petitioner was not, under this Court's precedent, subject to suppression as it was unconnected to the alleged seizure that occurred by virtue of the traffic stop. Resolution of the conflict on the question presented in petitioner's favor would not change the result in his case.

This Court has consistently rejected a rule that would require the suppression of evidence merely because there was a connection between it and a violation of the Fourth Amendment. As was stated in *United States v. Leon*, 468 U.S. 897 (1984) , "[w]e have declined to adopt a per se or 'but for' rule that would render inadmissible any evidence that came to light through a chain of causation that began with an illegal arrest." *Id.* at pp. 910-911; see also *United States v. Ceccolini*, 435 U.S. 268, 274 (1978); *Wong Sun v. United States*, 371 U.S. 471, 487-488 (1963).

The exclusion of evidence somehow connected with a Fourth Amendment violation requires at a minimum a causal connection between the illegal conduct and the evidence sought to be suppressed. As this Court has said, derivative evidence may be suppressed only if it is "in some sense the product of illegal government activity." *New York v. Harris*, 495 U.S. 14, 19, (1990) quoting *United States v. Crews*, 445 U.S. 463, 471 (1980). However once a connection between the evidence and the illegality has been established, the court still must examine the closeness of the connection to determine whether the evidence may be admissible. The test is whether "the chain of causation proceeding from the unlawful conduct has been so attenuated or has been interrupted by some intervening circumstance so as to remove the 'taint' imposed upon that evidence by the original illegality." *United States v. Crews*, 445 U.S. at 471.

Here, assuming that Petitioner was unlawfully detained during the time the vehicle came to a stop, there was no sufficient connection between that detention and the evidence obtained from his person and the vehicle. Deputy Brokenbrough had no contact with Petitioner and obtained no evidence until after the vehicle had been stopped. At that point, their encounter was consensual. See *United States v. Drayton*, 536 U.S. 194, 204 (2002).

During the course of this contact, Deputy Brokenbrough discovered that Petitioner was a wanted parolee, and based on a warrant supported by probable cause, he arrested Petitioner. Incident to that arrest, Petitioner was searched and a syringe cap was discovered. There is no claim that the arrest of Petitioner or the search incident to that arrest was improper. Thus, the discovery of the syringe cap was not the product of any illegal police action.

This case is analogous to *United States v. Crews*, 445 U.S. 463. Crews was illegally arrested and thereafter the victim identified him in court. Crews asserted that the identification evidence should be excluded because, but for his illegal arrest, he would not have been in court and the victim would not have been in a position to identify him. This Court refused to suppress this evidence, ruling that the evidence was not a product of the illegality: the in-court identification was not occasioned by any exploitation of the defendant's Fourth Amendment rights. *Id.* at pp. 470-471. See also *New York v. Harris*, 495 U.S. 14, 19 (post-arrest statement admissible despite illegal entry because arrest lawful).

In the case at bar, although police would not have discovered the warrant for Petitioner's arrest but for the contact following the traffic stop, the challenged evidence

was the product of Petitioner's arrest and not of that detention. As there is no claim the *arrest* was unlawful, the evidence is not connected to any illegality. *Id.* The evidence was not subject to suppression.

The same analysis applies to the evidence taken from the vehicle. Here, the officers were permitted to search the passenger compartment of the vehicle and any containers found therein pursuant to the lawful arrest of Petitioner. *See New York v. Belton*, 453 U.S. 454, 460-461 (1980). That search uncovered the evidence of methamphetamine manufacturing. The "passenger detention," if such it was, was long over at that point. Thus, the discovery of this evidence was a product of Petitioner's lawful arrest and not a product of any unlawful detention. As such, it was not subject to suppression.

Moreover, even if it could somehow be asserted that the evidence obtained against Petitioner was the product of an illegal detention, nonetheless the evidence was not subject to suppression as that casual chain was sufficiently attenuated. In *Brown v. Illinois*, 422 U.S. 590, 603-604 (1975), this Court set forth the factors to consider in order to determine whether the "taint" of a primary illegality has been sufficiently attenuated: (1) the time between the illegal police conduct and the acquisition of the evidence; (2) the presence of intervening circumstances; and (3) the purpose and

flagrancy of the police misconduct.

Here, two factors strongly dilute any taint. First, a significant intervening factor existed, namely, the valid arrest of Petitioner pursuant to a warrant. Unlike other situations involving allegedly intervening factors, the arrest of Petitioner was not the result of the situation created by the original police illegality. See, e.g., *Brown v. Illinois*, 422 U.S. at p. 605, fn. 12. Rather the arrest was due to prior conduct of Petitioner giving rise to the warrant.

Moreover, the police misconduct, if any, in detaining petitioner was not flagrant. The officer did not know who petitioner was when he stopped the car. The stop was not a pretext to obtain evidence against petitioner. Instead, Deputy Brokenbrough honestly was seeking to ascertain the validity of the car's registration. There is no evidence of bad faith here. And the stop was non-violent and brief. When taken together, the intervening fact of Petitioner's arrest and the lack of flagrancy in the officer's conduct in detaining petitioner are more than sufficient to attenuate any taint of the evidence obtained from the allegedly unlawful detention. See *United States v. Simpson*, 439 F.3d 490, 495 (8th Cir. 2006); *United States v. Johnson*, 33 F.3d 538, 543-545 (7th Cir. 2004); *United States v. Green*, 111 F.3d 515, 521-522. (7th Cir. 1997).

It is true that the evidence was discovered close in time to the allegedly unlawful "passenger detention." But this case is unlike one where the proffered intervening act, such as a defendant's inculpatory statement or his consent to search, well might have been the product of coercive police action in the carrying out of the detention or initial illegality. Here, in contrast, the stop was routine and would not have overborne petitioner's ability to consent to any police contact. And the separate intervening act of an arrest pursuant to a warrant for conduct by petitioner that antedated the claimed illegal stop had nothing to do with any coercive affect on the Petitioner's state of mind.

Petitioner does not address the issue of causation in any detail in the petition. The only reference is a conclusory one stating petitioner's view that the evidence obtained against him was incident to his arrest and that his arrest was "a direct result of the unreasonable traffic stop and the resulting detention...." (Petn. at 22-23.) From there petitioner, briefly and without analysis, asserts that "the seized items are causally related to the illegal traffic stop." (Petn. at 23.) Finally, petitioner incorrectly argues that "the prosecution produced no evidence sufficient to purge the taint of the traffic stop." (Petn. at 23.) As the State has explained above the evidence showed that any taint had

been purged. Even the main case cited by petitioner in support of his petition, *United States v. Mosley*, 454 F.3d 249 (3rd Cir. 2006) does not support his argument concerning the required causation. The *Mosley* Court specifically noted that if the government was able to establish the existence of an intervening act or event that fact could purge the taint of the illegal stop. *Mosley*, 454 F.3d at 269. Here, respondent has pointed to two such factors, discussed above, the fact that a warrant for petitioner's arrest existed and was discovered, and the existence of a consensual contact between the officer and petitioner after the stop and at the time the warrant was discovered.

Thus, even if Petitioner had been unlawfully detained due to the stop of the vehicle, the evidence obtained against him was not subject to suppression because it was not the "fruit" of any "poisonous tree." Resolution of the question presented in petitioner's favor would not change the result in his case.

CONCLUSION

Accordingly, respondent respectfully requests this Court deny the petition for writ of certiorari.

Dated: January 12, 2007

Respectfully submitted,

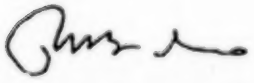
EDMUND G. BROWN JR.
Attorney General of the State of California

MARY JO GRAVES
Chief Assistant Attorney General

MICHAEL P. FARRELL
Senior Assistant Attorney General

DONALD E. DENICOLA
Deputy State Solicitor

MICHAEL A. CANZONERI
Supervising Deputy Attorney General



PAUL A. BERNARDINO
Deputy Attorney General
Counsel of Record

Counsel for Respondent